APPENDIX 7

APPENDIX A

Constitutional and Statutory Provisions Involved

CONSTITUTION OF THE UNITED STATES

ARTICLE I, SECTION 8:

The Congress shall have power * * *

To regulate Commerce with foreign Nations, and among the several States * * *.

* * * * *

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

* * * * *

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ALABAMA CODE OF 1940 TITLE 7

§ 188. How corporation served.—When an action at law is against a corporation the summons may be executed by the delivery of a copy of the summons and complaint to the president, or other head thereof, secretary, cashier, station agent or any other agent thereof. The return of the officer executing the summons that the person to whom delivered is

the agent of the corporation shall be prima facie evidence of such fact and authorize judgment by default or otherwise without further proof of such agency and this fact need not be recited in the judgment entry. (1915, p. 607.)

* * * * *

§ 199(1). Service on non-resident doing business or performing work or service in state.—Any non-resident person, firm, partnership, general or limited, or any corporation not qualified under the Constitution and laws of this state as to doing business herein, who shall do any business or perform any character of work or service in this state shall, by the doing of such business or the performing of such work, or services, be deemed to have appointed the secretary of state, or his successor or successors in office, to be the true and lawful attorney or agent of such non-resident, upon whom process may be served [in any action accrued or accruing from the doing of such business, or the performing of such work, or service, or as an incident thereto by any such non-resident, or his, its or their agent, servant or employee.]* Service of such process shall be made by serving three copies of the process on the said secretary of state, and such service shall be sufficient service upon the said non-resident of the state of Alabama, provided that notice of such service and a copy of the process are forthwith sent by registered mail by the secretary of the state to the defendant at his last known address, which shall be stated in the affidavit of the plaintiff or complainant hereinafter mentioned, marked "Deliver to Addressee Only" and "Return Receipt Requested", and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said non-resident,

---

* Following the decision in *New York Times Company* v. *Conner* 291 F. 2d 492 (5th Cir. 1962) the statute was amended by substituting the following language for the bracketed portion: [in any action accrued, accruing, or resulting from the doing of such business, or the performing of such work or service, or relating to or on an incident thereof, by any such non-resident, or his, its or their agent, servant or employee. And such service shall be valid whether or not the acts done in Alabama shall of and within themselves constitute a complete cause of action.] The amendment applied "only to causes of action arising after the date of the enactment" and therefore has no bearing on this case.

or the secretary of state shall be advised by the postal authority that delivery of said registered mail was refused by said non-resident; and the date on which the secretary of state receives said return receipt, or advice by the postal authority that delivery of said registered mail was refused, shall be treated and considered as the date of service of process on said non-resident. The secretary of state shall make an affidavit as to the service of said process on him, and as to his mailing a copy of the same and notice of such service to the non-resident, and as to the receipt of said return receipt, or advice of the refusal of said registered mail, and the respective dates thereof, and shall attach said affidavit, return receipt, or advice from the postal authority, to a copy of the process and shall return the same to the clerk or register who issued the same, and all of the same shall be filed in the cause by the clerk or register. The party to a cause filed or pending, or his agent or attorney, desiring to obtain service upon a non-resident under the provisions of this section shall make and file in the cause, an affidavit stating facts showing that this section is applicable, and stating the residence and last known post-office address of the non-resident, and the clerk or register of the court in which the action is filed shall attach a copy of the affidavit to the writ or process, and a copy of the affidavit to each copy of the writ or process, and forward the original writ or process and three copies thereof to the sheriff of Montgomery county for service on the secretary of state and it shall be the duty of the sheriff to serve the same on the secretary of state and to make due return of such service. The court in which the cause is pending may order such continuance of the cause as may be necessary to afford the defendant or defendants reasonable opportunity to make defense. Any person who was a resident of this state at the time of the doing of business, or performing work or service in this state, but who is a non-resident at the time of the pendency of a cause involving the doing of said business or performance of said work or service, and any corporation which was qualified to do business in this state at the time of doing business herein and which is not qualified at the time of the pendency of a cause involving the doing of such

business, shall be deemed a non-resident within the meaning of this section, and service of process under such circumstances may be had as herein provided.

The secretary of state of the state of Alabama, or his successor in office, may give such non-resident defendant notice of such service upon the secretary of state of the state of Alabama in lieu of the notice of service hereinabove provided to be given, by registered mail, in the following manner: By causing or having a notice of such service and a copy of the process served upon such non-resident defendant, if found within the state of Alabama, by any officer duly qualified to serve legal process within the state of Alabama, or if such non-resident defendant is found without the state of Alabama, by a sheriff, deputy sheriff, or United States marshal, or deputy United States marshal, or any duly constituted public officer qualified to serve like process in the state of the jurisdiction where such non-resident defendant is found; and the officer's return showing such service and when and where made, which shall be under oath, shall be filed in the office of the clerk or register of the court wherein such action is pending.

Service of summons when obtained upon any such non-resident as above provided for the service of process herein shall be deemed sufficient service of summons and process to give to any of the courts of this state jurisdiction over the cause of action and over such non-resident defendant, or defendants, and shall warrant and authorize personal judgment against such non-resident defendant, or defendants, in the event that the plaintiff prevails in the action.

The secretary of state shall refuse to receive and file or serve any process, pleading, or paper under this section unless three copies thereof are supplied to the secretary of state and a fee of three dollars is paid to the secretary of state; and no service shall be perfected hereunder unless there is on file in the office of the secretary of state a certificate or statement under oath by the plaintiff or his attorney that the provisions of this section are applicable to the case. (1949, p. 154, §§ 1, 2, appvd. June 23, 1949; 1951, p. 976, appvd. Aug. 28, 1951; 1953, p. 347, § 1, appvd. Aug. 5, 1953.)